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# NAVAL POSTGRADUATE SCHOOL MONTEREY, CALIFORNIA



## THESIS



ETHICS IN DOD CONTRACTING  
NEGOTIATIONS: A MODEL  
TO ADDRESS POLICY, PROCEDURES AND  
PRACTICES AS THEY APPLY TO BOTH  
GOVERNMENT AND INDUSTRY

by

Jeffrey C. Horton

December, 1994

Principal Advisor:

Mark Stone

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**ETHICS IN DOD CONTRACTING NEGOTIATIONS: A MODEL TO  
ADDRESS POLICY, PROCEDURES, AND PRACTICES AS THEY  
APPLY TO BOTH GOVERNMENT AND INDUSTRY**

by

Jeffrey C. Horton  
Lieutenant, Supply Corps, United States Navy  
B.S., United States Naval Academy, 1985

Submitted in partial fulfillment  
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December 1994

Author:

Jeffrey C. Horton

Approved by:

Mark Stone, Principal Advisor

Commander Rebecca Adams, Associate Advisor

David R. Whipple, Chairman  
Department of Systems Management



## ABSTRACT

Contract negotiations have been an area in the acquisition process where there has been much opportunity for compromise and resulting ethical dilemmas. The area of this research concerns the subject of ethical practices for both Government and industry in contract negotiations. It is not right to legislate ethics, yet, it is necessary to provide a model that can address ethical practices and resulting dilemmas that the contract negotiator is faced with.

This thesis addresses the policies, procedures, and practices resulting from the subject of ethics in contract negotiations. It also develops a model of essential elements for practice as derived from analysis of requirements, regulations, and the current ethics culture of contract negotiations.

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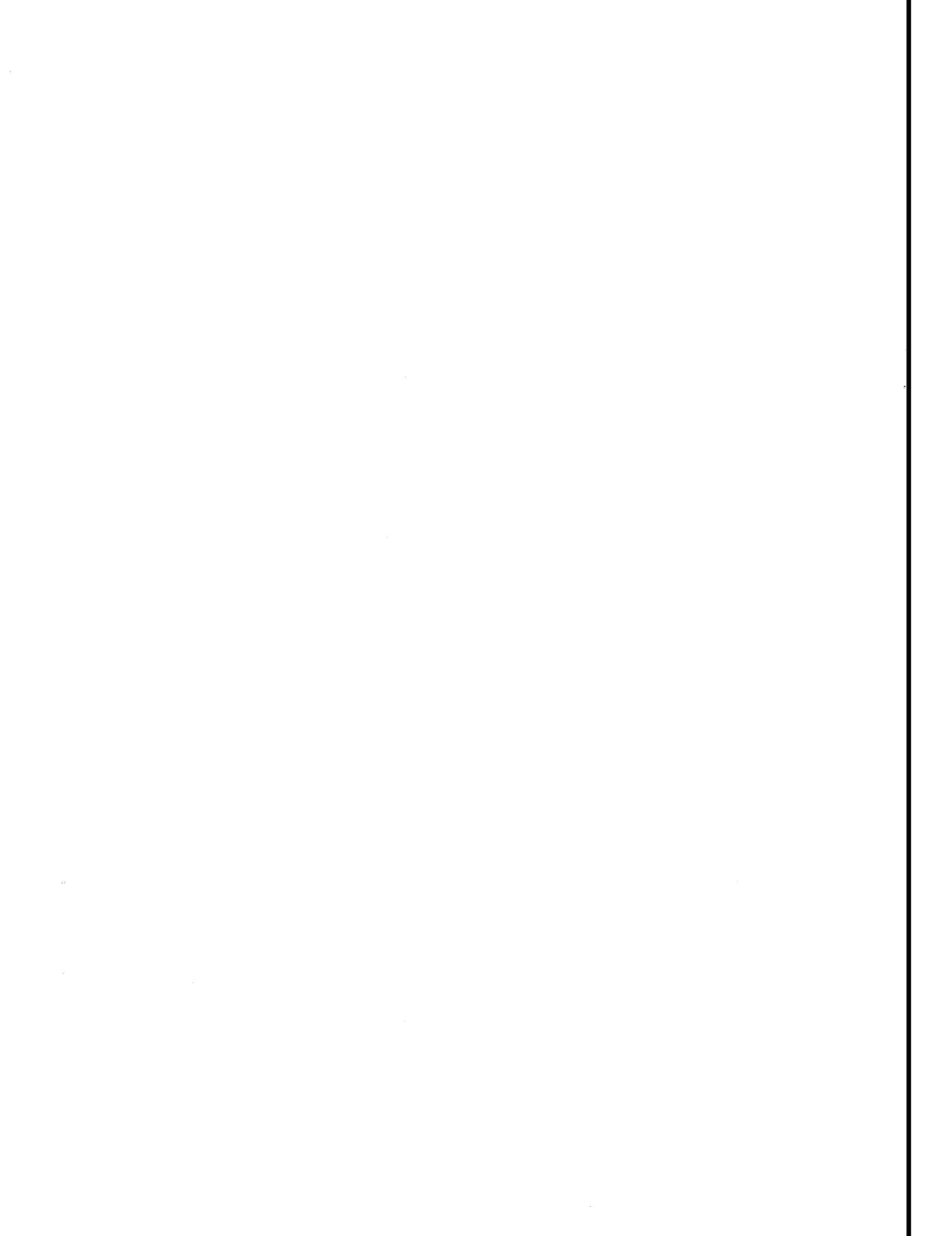
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## I. INTRODUCTION

### A. AREA OF RESEARCH

The area of this research concerns the subject of ethical practices in Government and industry contract negotiations. Its constantly changing face along with the reevaluation of the acquisition practices for both the Government and the civilian industry have provided great opportunity for study. The title of this thesis is "Ethics in DOD Contracting Negotiations: A Model to Address Policy, Procedures, and Practices as They Apply to Both Government and Industry."

### B. RESEARCH QUESTIONS

#### 1. Primary research question

What are the elements and actions necessary to develop an ethics model that concerns the policy, procedures, and practices in contracting negotiations as they might apply in both Government and industry?

#### 2. Subsidiary research questions

- a. What are the principal ethical considerations in contracting negotiations in developing this model? How would one define ethical behavior in negotiations?
- b. What is the current ethics culture of negotiations?
- c. What would be the best model to clarify the current ethics culture and the practices that exist today?
- d. What are the differences between Government and industry concerning ethical behavior in contract negotiations?
- e. What are the essential elements of the model concerning ethical behavior in negotiations?

### **C. DISCUSSION**

The interest in this topic was generated by the research that was done on a paper assigned for a course on Contract Pricing and Negotiation. Many people involved in contract negotiations that were interviewed for previous research have insisted that it is not right to try to "legislate" ethics; however, the question still needs addressing since there are too many compromising situations or potential ones that both the Government and industry get into regarding their ethical practices and beliefs.

### **D. SCOPE OF THESIS**

The main thrust of the thesis will be in the area of what standards the Government and industry follow and an analysis of how these groups view the ethics standards. This is geared to be a policy study that will result in a model that can be adhered to in the areas of contracting negotiations where there is much opportunity for compromise.

### **E. METHODOLOGY**

Major research was required in the area of the statutes and policies that address ethical practices in negotiations. Once that had been established, a survey (Appendix A) was conducted to query industry and Government Contracting Officers and their staffs (Appendix B) for their opinions on whether these policies are effective. This survey also solicited suggestions as to what can be done to improve the negotiating arena.

There was also a need to establish a common base of standards from the opinion surveys generated through further

research. From this, a model was formed that can suit both sides of the contract negotiating world.

#### **F. CHAPTER OUTLINES**

##### **1. Introduction**

The official introduction to the overall thesis research is given here with short chapter outlines and descriptions.

##### **2. Background**

This chapter examines previous research done on the subject of ethics in contract negotiations and the findings that are important to elements necessary for inclusion in an ethics policy.

##### **3. Ethics requirements, statutes, and policies**

An analysis of the Joint Ethics Regulation (DOD 5500.7-R), which houses all Department of Defense ethics requirements, is completed to further examine any advantages or shortfalls with the current guidance.

##### **4. Oversight effectiveness**

Part of the survey answers that were given by negotiators from Government and industry are analyzed as to the opinion of organizational oversight in contract negotiations.

##### **5. Analysis of Government/industry policy implementation**

This chapter includes both an analysis of four corporate ethics policies in addition to analysis of the survey section that addressed the contract negotiators' opinions of policy implementation effectiveness.

## **6. Attitude of the personnel involved in negotiation process towards ethics**

Chapter VI is submitted through analysis of the survey to capture the current culture of contract negotiators and their feelings as to whether Government or industry is more ethical and why.

## **7. Conclusions and recommendations**

This final chapter gives the overview of the necessary elements that should be included in a standard organizational ethics policy in addition to summarizing recommendations with answers to the thesis questions.

## **G. BENEFITS OF STUDY**

The benefits derived from the study help the reader to understand the importance of having a standardized ethics policy/model. Sometimes policies are ignored since some people are under the impression "they are ethical and everyone else is not." The bottom line is to build some sort of bridge in this area that will have a positive effect on both sides of the aisle in terms of communication in contracting. The lessening of legal violations is also a goal. Chapter II describes in detail the background research that went into this project and further leads the reader into the main body of the thesis which is the evaluation of the ethics culture.

## II. BACKGROUND

### A. INTRODUCTION

The subject of ethics has been debated since the very inception of negotiations, whether involving a purchase or a famous peace accord. Recent history, however, has brought the subject to the forefront as a result of grave misconduct involving numerous aspects of business. As the business world sought to crack down on abuses, many surveys, hearings and other formal actions have been instigated to clarify what is considered ethical in business purchasing. The "Section 800 Panel" or the "Panel," a group established by Section 800 of the National Defense Authorization Act of 1991 took on the heavy burden of recommending the streamlining and codifying the current acquisition laws. The Panel even reviewed ethics issues to recommend revision to laws to clarify and/or simplify the current system.

The 1980's abuses in procurement brought about statutes to address the ethics violations. Now there has been a new energy as described by the Panel to update those provisions affecting this subject.

In what now is a different decade and a different procurement environment, the Panel believes it may be time to reassess the contribution of some of those provisions. The Panel analyzed six legal restrictions and one comprehensive regulation, all of which potentially govern the receipt of a gift by a defense employee engaged in procurement: the bribery statute at 18 U.S.C. Subsection 201(b); the criminal gratuities statute at 18 U.S.C. Subsection 201(c); the gift provisions of the procurement integrity amendments to the Office of Federal Procurement Policy Act at 41 U.S.C. Subsections 423(a)(2) and (b)(2); the supplementation of salary statute at 18 U.S.C. Subsection 209; the civil gratuities statute at 10 U.S.C. Subsection 2207; the recently enacted gift statute at 5 U.S.C. Subsection 7353; and the new

executive branch standards of conduct regulations promulgated by the Office of Government Ethics (OGE) at 5 C.F.R. Subsection 2635. [Ref. 21:p. 62]

This has been just one example of the effort being put into the subject of the continuous development of an adequate ethics policy. It is paramount that an ethics policy is formed by the Government for both itself and industry, especially with respect to negotiations in contracting. The focus of this thesis is to study the actions necessary to develop an ethics model that concerns the policy, procedures and practices in contract negotiations as they might apply in both Government and industry. A catalyst for this thesis was research done to examine the set of ethics data collection that could directly or indirectly effect the conduct of the contracting and negotiation process. These data were derived from a series of studies/surveys that were conducted over the period of the last fifteen years by various professionals in the purchasing industry. The focus was then adjusted to formulate a general policy. The policy was described in a paper by this researcher titled, "A Short Ethics Policy: Catalyst Research Results," and could be used as a guideline for the participants in a small Government contracting negotiation.

#### **B. EXAMPLES OF ETHICS DATA COLLECTION**

The first of the studies, reviewed by this thesis, was conducted by William Rudelius and Rogene A. Buchholz in 1979 that was based on personal conversations, interviews and mail surveys that brought information from 75 local

manufacturing firms and their personnel in the Minneapolis-St. Paul area. These two highly respected researchers directed their survey towards senior purchasing managers and some ethically conscious groups involved in purchasing. The survey was driven by the constant ethical dilemmas that purchasing managers and buyers face from day-to-day.

Purchasing managers live in an uneasy peace with ambiguous signals received from top management about how to deal fairly with suppliers while achieving corporate purchasing goals. They may not exactly be under siege, but they are a little gun shy. [Ref. 4:p. 2]

The findings of this study resulted in the purchasing personnel preferring to have their top management make decisions on which written ethical standards are used. [Ref. 4:p. 3]

The second study was research conducted by Alan J. Dubinsky and John M. Gwin in 1981 that was focused on the following three topics: (1) the overall ethical environment in which business management operates; (2) situations in which terms of ethics are potentially troublesome to management; and (3) public perceptions of potentially questionable marketing practices. [Ref. 9:p. 9] This study mainly compared the perceptions of employees of various companies with respect to ethical situations that they faced on a day-to-day basis. The final outcome was a certain set of ethical questions that seemed to arise according to the personnel that were involved with sales and purchasing.

Finally, the very nature of sales and purchasing activities, coupled with frequent personal interaction, makes the potential for ethically troublesome situations relatively high.... Perhaps another explanation for business people's behavior

is that they employ two sets of ethical standards -- a personal set and business set. [Ref. 9:pp. 9,10]

The third of the studies to be observed was Richard E. Trevison's "Developing a Statement of Ethics" that was completed in the Fall of 1986. The purpose of this study was to conduct a thorough review of Acurex Corporation's Policy/Procedure Number 0503 which concerned vendor relations. Because of the changing procurement environment there was a need to update and/or change the policy to meet the evolving standards. There was also a need to study the areas that are required to expand the guidelines or communicate them outside the company to promote the understanding of ethics. As emphasized in other studies, the recent illegal payoffs that have emerged, coupled with various kickbacks have started the ball rolling for management to provide a clear-cut policy for firms to conduct their day to day business. Trevison's research, which involved the examination of various publications and surveys, focused on two major areas that concerned ethics. One was the clarification and simplification of language used to communicate the policy and the other was to study the key organizational relationships that would induce ethical problems.

This study suggests that although basic values do not change dramatically in a decade, language and customs may. It is therefore important for most firms to review their policies with respect to vendor relations and ethics periodically to ensure their relevance to contemporary business and society. [Ref. 28:p. 12]

The fourth and last study was one completed by Laura B. Forker and Robert L. Janson which addressed the

uncertainties that affect ethical conduct of purchasing personnel. Forker and Janson concerned themselves with the following subjects during the conduction of their research: (1) ethical practices, (2) buying experience, (3) acceptance of favors, (4) narrative comments, (5) organizational profile, and (6) personal data about the respondent. The results of this survey were then compared to a survey conducted in 1978 by Ernest & Whinny and a survey conducted by the Illinois Institute of Technology concerning purchasing ethics. [Ref. 12:p. 19]

Four of the previous six surveys on ethical practices in purchasing concluded that a formal company ethics policy is helpful in deterring questionable practices by employees.... Unfortunately, management guidance on ethical practices appears to have eroded somewhat over the past twelve years, even though reviews of ethical practices by management have become more frequent. [Ref. 12:pp. 24,26]

Surprisingly enough, these four studies came up with seven similar subject areas that had defined what various employees and managers thought were potential violations of ethical conduct during the purchasing process. The common areas for review were as follows:

- (1) The exaggeration of a buyer or supplier's problem to achieve a desired outcome.
- (2) Giving preferential treatment to purchasers or suppliers that top management prefers.
- (3) Allowing people's personalities to influence buying/selling transactions.
- (4) Allowing the conduction of reciprocity.
- (5) Seeking and giving competitor information on an illegal basis for gain.
- (6) Free gifts, meals and trips.

(7) The showing of bias against companies/people that circumvent purchasing.

All of these topics fell right into the area of negotiations and the conduct of events that surround them.

#### C. ANALYSIS OF ETHICAL AREAS

Exaggerating a position to obtain a certain outcome is one that was also described by J. Keith Murnighan in his 1990 book The Dynamics of Bargaining Games as selective disclosure and/or exaggeration. A negotiator may withdraw, holdback, or overemphasize his position to get what he desires in the end. Murnighan makes a comparison to used car salesmen. Used car salesmen have had the reputation for stretching all kinds of information to make a sale. This, for the most part, was considered unethical by both management and employees of purchasing departments in the surveys.

Preferential treatment of vendors prior to and during negotiations can present various problems during business dealings even though the vendor happens to be one of the best. One may still encounter possible confrontations from competitors that feel they are being misrepresented or ignored. This particular idea is stressed amongst the senior purchasing managers as outlined in the 1979 Rudelius/Buchholz survey.

Personality influence is where one negotiator can favor a certain other during the selection of a company to possibly enter into negotiations. This practice, like the preferential treatment aspect, should be completely avoided.

The issues involving preferential treatment from certain suppliers probably present the most complex challenge. They are clearly ethical issues that lack the underpinning of management policy and they involve the pulls of loyalties and disloyalties among people and their organizations. [Ref. 4:p. 6]

Reciprocity is always a possibility when there are negotiations involved in contracting. It has been in some cases considered illegal to use reciprocity in the course of completing negotiations because of the resulting restrictions that affect competition where the Government is involved.

While this is a reasonably common practice, it can be illegal if it results in a market situation determined to be in restraint of trade. This is a matter for top management attention. [Ref. 11:p. 17]

Seeking and giving competitor information on an illegal basis for gain must be avoided at all costs. This may also fall under the category of the negotiator using his buying power to gain concessions and/or information in a manner that may destroy reputations and future relationships with companies. The 1981 survey by Dubinsky and Gwin showed that both buyers and sellers had the same perception on this issue and were likely to have a policy concerning this.

Free gifts, meals, and trips are probably the easiest way to cause a conflict in the preparations for and actual conduct of negotiations. Some buying organizations allow for certain gifts at a certain value; however, it is recommended that it be avoided to prevent any conflicts. The Acurex Corporation even sends out their policy about six weeks

prior to the Christmas holidays to keep the expected standards well- circulated. Acurex does allow gifts as long as they are less than or equal to \$10.00 and are such novelty items as pens, pencils and calendars. They forbid any repetitive meals and only allow paid-for business travel if it is approved by their division purchasing manager. The bottom line in reference to gift giving is:

In this category of practices that are generally considered to be flagrant violations of trust, conflict of interest typically is the main issue. When a conflict of interest exists, a buyer's decision may compromise the best interests of his or her employer. [Ref 11:p. 17]

The last of the seven common areas is the showing of bias against companies/people that circumvent the purchasing system. This particular area is more attributed to the purchasing community and not the sales community according to the Dubinsky/Gwin team. The 1990 Forker/Janson results showed the following in this area:

Sixty-two percent of the respondents reported that their companies experience "backdoor" vendor representative sales calls. And another 62 percent revealed that unauthorized buying by departments or individuals other than those in purchasing takes place at least occasionally in their firms. [Ref. 12:p. 25]

This clearly could bring an embarrassing situation to a negotiating table if this kind of behavior was going on behind the scenes.

These common areas that were cited by the various researchers will negatively affect any negotiation if used in the wrong way. J. Keith Murnighan in his book The Dynamics of Bargaining Games uses the R. J. Lewicki model of 1983 [Ref. 14] and adds to it, simplifying the ideas that

were mentioned above. He also puts them into seven categories titled in the following manner:

- (1) Selective Disclosure and/or Exaggeration.
- (2) Misrepresentation.
- (3) Deception.
- (4) False Threats.
- (5) False Promises.
- (6) Falsification.
- (7) Inflicting Direct and Intentional Harm.

Without going into further detail, it is evident how these ideas form a basic avoidance package to be reviewed before going into a negotiation. [Ref. 20:p. 186-187]

So far there has been an emphasis on the negative. There has been a need, however, to point out some of the positives conveyed by various research projects involving ethics in the purchasing and negotiating world.

D. M. Lascelles and B. G. Dale of the United Kingdom conducted research involving the buyer-supplier relationship associated with Total Quality Management. These lecturers from the University of Manchester Institute of Science and Technology point out that despite the restrictions and standards placed on the purchaser and buyer it was paramount that they look for ways to improve any relationship in that some of these restrictions can sometimes act as barriers to meeting the end business goals. They concentrated their research on mostly quality of business practice improvement. Remembering not to violate the ethics standards, they emphasized that improvement of communication is the key.

Several suppliers indicated a willingness to collaborate more closely with their customers on component design and product engineering. Such collaboration would form a solid basis for long-term improvement and provide a logical starting point for a supplier development activity.

[Ref 7:p. 15]

In another light, negotiators may be faced with some different dilemmas that will call for close examination of the ethics principles which are practiced today. Even though laws emphasize that DOD purchasing should be conducted with U.S. firms, opportunities exist to negotiate with foreign firms. David N. Burt in his article "The Nuances of Negotiating Overseas" emphasizes the importance of knowing one's counterparts. He includes as part of his subject matter the importance of understanding the "cultural and business heritage" of the countries involved and the importance of understanding their own strategies and tactics. The Japanese, for example, usually appreciate gift giving and entertainment as an acceptable part of their business exchanges. Other cultures may require or accept practices that have not been a part of or have directly violated our own business ethics.

Entertainment is an important part of the process of developing the personal relations and good will that are prerequisites to a good agreement. Gift giving is a common and accepted factor in Japanese business transactions. [Ref. 5:p. 7]

As can be seen in this example our ethics stance may be challenged from time to time depending on the situation. The bottom line in just about every case is the paramount task of knowing the party on the other side of the table. Ethics

requirements may have to be altered to meet business goals as negotiations are being conducted outside our borders.

#### **D. AN ETHICS PRIMER**

From the data collected it was fairly easy to come up with a set of basic ethics standards to create an example for basic guidelines for any buying organization. Since there has been such an opportunity for ethical compromises, there is a need for all buying organizations to have a published set of standards. They not only need to be published to the purchasing departments but also to the selling counterparts. The education of both the buyer and seller will at least help to preclude some of the conflicting situations that buyers are often confronted with and will make the overall acquisition process go smoother. The bottom line for success is to maintain the current high standards and always keep in mind to "do unto others as you would have them do unto you."

#### **E. SUMMARY**

The above research has served as a catalyst to prime this examination of the principal ethical considerations in contract negotiations. Ethical behavior in negotiations serves as a topic of examination to report on the current ethics culture of negotiations. In addition to this, a survey was formulated to study the ethics culture and the current practices that exist today. This leads to the necessary understanding of the differences between Government and industry concerning ethical behavior in contract negotiations. All of these elements are used to develop a model that concerns the policy, procedures, and practices concerning ethics in contract negotiations as they

apply to both Government and industry.

Chapter III is an examination of the policies and regulations that cover ethical practices in contract negotiations. The purpose of taking this direction will be to analyze the regulations that may or may not influence the act of Government negotiating.

### **III. ETHICS REQUIREMENTS, STATUTES, AND POLICIES**

#### **A. INTRODUCTION**

Even though it is often reiterated that ethics cannot be legislated, it has been necessary to provide Government employees a source of guidance for acceptable conduct. This was never more needed than during the period of the 1980's where so much fraud, waste and abuse took place.

There have been many standards in place concerning the subject of ethics, however, the source of the standards were spread out in many different publications. For the most part, there was not a single reference point that the Government contract negotiator could obtain to answer his/her questions concerning accepted practices or potential hazards for violation of statutes.

It wasn't until August of 1993 that a publication was signed out by then Secretary of Defense, Les Aspin. Titled "Joint Ethics Regulation (JER)", this publication is a consolidation of all the appropriate regulations to reference ethical behavior. This effort arrived on the occasion of putting into practice the many recommendations made by the various "Blue Ribbon" panels throughout the last twenty years concerning acceptable conduct in Government business.

Single Source of Guidance. This Regulation provides a single source of standards of ethical conduct and ethics guidance, including direction in the areas of financial and employment disclosure systems, post employment rules, enforcement, and training. [Ref. 8:p.1]

This regulation was effective immediately upon its publication in 1993. It has been designated as mandatory for use by all DOD Components. Permission has been granted to

issue supplementary instructions by the Heads of DOD Components only with the exclusive permission of the General Counsel of the Department of Defense, "to provide for unique requirements." [Ref. 8:p. ii]

## **B. OVERVIEW OF DOD 5500.7-R**

This regulation provides a broad spectrum of guidance which is housed within various Directives, U.S. Codes, and Executive Orders. Each chapter concerns major ethical subject matter. These chapters are as follows:

- (1) General Information
- (2) Standards of Ethical Conduct
- (3) Activities with Non-Federal Entities
- (4) Travel Benefits
- (5) Conflicts of Interest
- (6) Political Activities
- (7) Financial and Employment Disclosure
- (8) Seeking Other Employment
- (9) Post-Government Service Employment
- (10) Enforcement
- (11) Training
- (12) Ethical Conduct

Contract negotiations are an area where potential violations or misrepresentations of some of these subjects can occur. There is need, as part of this overview, to do a representative analysis of the subject areas where some mishaps may occur concerning the standards set forth in the JER. The following is an analysis of applicable subjects mentioned in this instruction that are applicable to contract negotiations. As a caveat, in part of this thesis research, a question was asked in a survey if a particular

Government or industry negotiator was aware that DOD 5500.7-R existed. It is interesting to note that the majority of the Government and industry negotiators that were surveyed did not know that this regulation was in effect or even existed.

Certain subjects in this regulation have been selected for analysis. The reason is for pointing out potential pitfalls or potential advantages in having this by one's side as a contract negotiator.

### C. ANALYSIS OF DOD 5500.7-R

#### 1. Chapter 1 (General Information)

Chapter 1 contains two subjects to be addressed. Section 1-214 describes the need for an ethics counselor in each command. The other, section 1-300, concerns the general outlines describing the requirement for all DOD employees to become familiar with all Government ethics provisions.

The first that involves the ethics counselor provision opens an interesting argument concerning the Legal Assistance Officer (or equivalent). The regulation calls for an ethics counselor to be an attorney.

Except for a DOD Component DAEO (Designated Agency Ethics Official), Alternate DAEO, or Deputy DAEO, a DOD employee appointed as an Ethics Counselor shall be an attorney. [Ref. 8:p.3]

The regulation says that Legal Assistance Officers that serve as ethics counselors "must clearly separate these roles." It goes on to point out that talks between the ethics counselor and the counselee are not protected by attorney-client privilege. [Ref. 8:p. 3]

As a negotiator, one may feel it necessary to have the attorney at one's side in any situation that would involve

potential ethical conflict. Even though not all ethical violations are violations of the law, it would be better to maintain that attorney-client privilege in all cases. This is one particular case where it becomes difficult to interpret ethical situations that arise and at the same time address the counselee that he/she is or is not under attorney-client privilege. The wording seems to emphasize that a DOD employee (and in this case a contract negotiator) must be careful in how he/she addresses the command ethics counselor concerning possible ethics dilemmas. Command ethics programs are constantly emphasizing the need to seek advice on these potential or existing ethical problems. The regulation seems threatening to this idea in the way that it is worded. A recommendation would be to separate the two duties of legal assistance and ethics counselor (by person) to further emphasize the importance of addressing any and all potential or ongoing ethics violations.

The second subject to be analyzed out of chapter 1 is that concerning the general DOD policy mentioned in section 1-300. This concerns the requirement for all DOD employees to become familiar with all ethics requirements. This is especially important since a number of negotiators surveyed were not familiar with this regulation.

C. DOD employees shall become familiar with all ethics provisions, including the standards set out in E.O. 12764 (reference (r)) in subsection 12-100 of this Regulation, and comply with them; d. DOD employees shall become familiar with the scope of and authority for official activities for which they are responsible. Sound judgment must be exercised. All DOD employees must be prepared to account fully for the manner in which that judgment has been exercised; [Ref. 8:p. 8]

There is still a need for this reference to be disseminated better in the future. This regulation covers most of the standards of conduct expected of DOD employees. In the new

light of "Reinventing Government" and the Vice President's desire to push accountability into lower positions, it will be necessary for all personnel to be intimately familiar with this ready reference since they will be held accountable for its contents.

## **2. Chapter 5 (Conflicts of Interest)**

Section 5-400 addresses an all important subject of bribery and graft.

All DOD employees are prohibited from, directly or indirectly, giving, offering, promising, demanding, seeking, receiving, accepting or agreeing to receive anything of value to influence any official act, to influence commission of fraud on the United States, to induce committing or omitting any act in violation of lawful duty, or to influence testimony given before an individual or non-Federal entity authorized to hear evidence or take testimony. [Ref. 8:p. 61]

When thesis students from the 815 Acquisition curriculum at the Naval Postgraduate School visited a corporation in Northern California for the purpose of conducting a mock contract negotiation, some of the students received gifts that were definitely above the \$25.00 threshold allowed. No matter how harmless this could have been, it still can be looked at as a compromise in the appearance of ethical practices. It is recommended that in the future absolutely no gifts on the part of Government negotiators should be received to prevent the appearance of an impropriety. Whenever this is practiced there will always be room for compromise. There is, however, the issue that involves purchasing or negotiating with foreign sources. As the U.S. looks to expand opportunities abroad there will be the need to examine the subject of dealing with foreign cultures. What is considered unethical in the United States could definitely be acceptable outside the borders. So far, none

of the DOD ethics guidance addresses such subjects. The Japanese, for example, have a totally different tolerance for gift giving than we do. [Ref. 5:p. 7] The expansion in the world-wide technology base will probably dictate our purchasing of Japanese products and yet will require careful consideration of the different cultural aspects of negotiating. It is recommended that these ethics instructions be modified to address international negotiating and proper acceptability of foreign business practices.

### **3. Chapter 11 (Training)**

Training for contract negotiators is a must concerning the many possible ethical situations that can arise in procurement. DOD guidance is specific on the direction of initial and annual ethics training.

Overall responsibility for initial and annual ethics training programs rests with the Head of each DOD Component acting through his DAEO. The Head of each DOD Component shall ensure that adequate resources are available to implement the requirements of this Chapter. Support shall be provided by the DOD Component legal and personnel offices as necessary. [Ref. 5:p. 141]

In many of the responses to the surveys that were sent out for this thesis, there was one clear recommendation on how to improve the ethics culture in both Government and industry. That was the improvement of the training programs. It may not necessarily mean that contract negotiators are lacking in this area, yet, as fast-paced as most procurement offices are, there may be a deficiency in this area since it was mentioned so consistently. It is important to note that training may prevent standards of conduct shortcomings and the specific use of this regulation will serve as a ready

reference to cover a myriad of subjects that will be valuable to the negotiator.

#### **4. Chapter 12 (Ethical Conduct)**

This chapter contains several interesting points for analysis. First of all it is important to note this particular chapter is actually Executive Order 12731 dated 19 October 1990. It offers the principles of ethical conduct for Government Officers and employees. In fact, Section 101 of Part I gives a general order that can encourage several questions of how to conduct oneself in the process of contract negotiations.

Section 101. Principles of Ethical Conduct. To ensure that every citizen can have complete confidence in the integrity of the Federal Government, each Federal employee shall respect and adhere to the fundamental principles of ethical service as implemented in regulations promulgated under sections 201 and 301 of this order. [Ref. 8:p. 150-1]

Three of the principles that follow are the subject of analysis:

(a) Public service is a public trust requiring employees to place loyalty to the Constitution, the laws, and ethical principles above private gain... (e) Employees shall put forth honest effort in the performance of their duties... (n) Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards promulgated pursuant to this Order. [Ref. 8:p. 150-1]

The question that is generated by looking at these principles concerns that of the tactics used in contract negotiations. What tactics are ethical and what are not? One must examine the use of deception as a tactic. Is it right to use this as an employee of the United States

Government? Further research is required concerning this as it is necessary to see if there are, or should be, exceptions made for Government contract negotiators. The Code of Ethics for Government Service says the following in part I; "I. Put loyalty to the highest moral principles and to country above loyalty to persons, party, or Government department." [Ref. 8:p. 153] This is required to be displayed in any area where 20 or more Government civilians are employed. This would question any use of deception in negotiating. Furthermore, this regulation goes on to address primary ethical values involving the subject of honesty.

**Honesty.** Being truthful, straightforward and candid are aspects of honesty. Truthfulness is required. Deceptions are easily uncovered and usually are. Lies erode credibility and undermine public confidence. Untruths told for seemingly altruistic reasons (to prevent hurt feelings, to promote good will, etc.) are nonetheless resented by recipients. Truths that are presented in such a way as to lead recipients to confusion, misrepresentation or inaccurate conclusions are not productive. [Ref. 8:p. 155]

This section alone offers some strong guidance to avoid deception that can be so tempting in negotiations. It is advisable that negotiators read these sections prior to going into a negotiation scenario. These are just a few examples of just how valuable the written guidance is concerning ethics and how it can be applied to contract negotiations. It would be surprising how the culture of negotiations would change if these regulations were strictly followed. Maintaining a standard by which we can train will also have a great effect on the conduct of negotiations. So much interpretation of these statutes and guidance is up for debate that contracting shops must be kept on their toes professionally to meet a purchase goal, or in general to represent the Government in a good and honest fashion.

#### **D. COMMON THEME**

A common theme in the analysis of this chapter (and especially Chapter 12 of DOD 5500.7-R) is that of honesty or the lack thereof. One is encouraged to look at the Lewicki(1983) model of lying and deception [Ref. 14] and/or the Murnigan (1991) model for varieties of unethical behavior in negotiations [Ref. 20] to see what is taking place. Is there "selective disclosure, misrepresentation, deception, false threats, false promises, infliction of harm"? [Ref. 20:pp. 186-187] If so, then a lead negotiator may need to reference the JER and ask him/herself these simple questions that were provided in Kenneth Blanchard and Norman Vincent Peale's The Power of Ethical Management. These questions were titled, "The 'Ethics Check' Questions."

**(1) Is it legal?**

- Will I be violating either civil law or company policy.

**(2) Is it balanced?**

- Is it fair to all concerned in the short term as well as the long term? Does it promote win-win relationships?

**(3) How will it make me feel about myself?**

- Will it make me proud? Would I feel good if my decision was published in a newspaper? Would I feel good if my family knew about it?

[Ref. 2:p. 27]

#### **E. CONCLUSION**

The Joint Ethics Regulation provides an all-encompassing look at the ethics requirements. The analysis of parts of the JER shows the pitfalls that can exist within

the bounds of interpretation. Now, there is a need to examine the ethics culture by way of looking at Government oversight effectiveness, policy implementation and attitudes from the actual negotiating workforce as seen through the survey submitted for this research. The next few chapters analyze the findings and recommendations from contracting personnel for improving the ethical culture of the negotiation process. Next, Chapter IV is an examination of the oversight effectiveness as seen through the eyes of surveyed Government and industry negotiators.

#### IV. OVERSIGHT EFFECTIVENESS

##### A. INTRODUCTION

The Government, in so many ways, provides an oversight function. One of the purposes of this thesis is to evaluate the negotiator's perception of the oversight provided in the contract negotiation culture, and specifically in the area of ethics.

To provide a tool for analysis of the culture of ethical practices in contract negotiations, a survey (Appendix A) was submitted to collect data. The survey was a compilation of general questions soliciting the opinions of various contract negotiators (Appendix B) and their concerns over the status of the ethics culture in both Government and industry.

The survey was kept short to 13 multiple choice questions. A section (question 14) was also provided for written comments if the negotiator felt it was necessary. Following the advice of previous researchers, the personnel surveyed were given a week to fill out the survey and return it, thus allowing for less of a chance of it being put the bottom of "in boxes." There were 117 surveys submitted to various buying offices around the country and 171 were returned. For analysis and background purposes, four categories of personnel were surveyed:

- (1) Government negotiators having only been employed by the Government.
- (2) Government negotiators employed by the Government yet were former industry negotiators.
- (3) Industry negotiators having only been employed by industry.

(4) Industry negotiators employed by industry yet were former Government negotiators.

The different categories of negotiators were important to the analysis of the culture of contract negotiations since the environments of Government and industry can be so different. The forces and goals that affect each environment may show a cause for the formulation of different opinions.

## B. ANALYSIS OF OVERSIGHT EFFECTIVENESS

### 1. SURVEY QUESTION #12

Question 12 of the survey submitted was specifically directed towards the oversight issue. The question was created as follows:

**To what extent is organizational oversight effective in producing ethical behavior in contract negotiations? (Choose One)**

- a. Government oversight works.
- b. Government oversight doesn't work.
- c. Industry oversight works.
- d. Industry oversight doesn't work.
- e. Neither works.
- f. It takes both.
- g. Government oversight affects Government negotiators, not industry negotiators.
- h. Government oversight affects industry negotiators, not Government negotiators.

One of the primary features of this question was not to just catch the feeling of oversight effectiveness itself, but to also to see if the culture of working in the

Government or industry creates a "we are always right" attitude. The six selections, "a" through "d," "g" and "h" catch the essence of this particular idea. Answer "e" is more or less self- explanatory when it comes to the opinion of the negotiator on oversight effectiveness. Answer "f" was designed to not only see if the oversight was effective but also to test the feeling of cooperation between the two entities of Government and industry.

*a. Government negotiator responses*

The majority of personnel acting as negotiators who were only employed by the Government responded that it takes both Government and industry to be effective in the oversight category. The statistics show from the survey that approximately 66 percent of the personnel in this category responded in this way. Six percent responded with the "a" category in that "Government oversight works." The "neither works" category was picked by 14 percent, along with 11 percent response to the "Government oversight affects Government negotiators only."

*b. Government/former industry responses*

Like the previous category, the majority (84 percent in this case) of these personnel chose answer "f" that it takes both industry and Government to make oversight effective. It is interesting to note that eight percent of those Government negotiators who were formerly employed by industry submitted that Government oversight definitely does not work (answer "b"). The strictly Government negotiators did not select answer "b" at all. A small percentage (four percent) said that Government oversight does work while another four percent submitted that Government oversight

only affects Government negotiators and not industry negotiators.

*c. Industry responses*

The pattern continues as industry admits that it takes both the Government/industry team to make oversight effective. In this case the response to answer "f" was 84 percent. The response also was nine percent for answer "c" in that industry oversight works, along with another nine percent responding to answer "b" in that Government oversight does not work. In this case, industry points a small finger at Government saying that it is not effective in its oversight; however, the Government did not respond by saying that industry was not effective.

*d. Industry/former Government responses*

The pattern has emerged that the majority of the negotiators feel that it takes both Government and industry to be effective. In the Industry/former Government response, 87 percent responded in this fashion. The other 13 percent responded (giving favor to their old employer) by saying that Government oversight does work.

*e. Question 12 overview*

Within this particular category, there was not a definite opinion that the current practices dictate that Government oversight is necessarily effective. The personnel responding were making the statement that whether or not they felt current oversight is effective, it will take actions from both Government and industry to ensure oversight effectiveness. Some comments in the written portion of the survey point to oversight being successful if

a good pattern of compliance to regulations is set. Ethical behavior itself cannot be mandated--it is a code of behavior that is driven by personal values. Other suggestions made in reference to oversight effectiveness are in the area of accountability. Continued training in the area of ethics coupled with the oversight for accountability will make overall oversight for ethical behavior effective. One surveyed negotiator described that "accountability tends to keep ethical behavior in 'check'." [Ref. 26] This comment tends to hold with one of Vice President Gore's "Reinventing Government" purposes to push accountability down to the lowest possible level. One Government negotiator had this to say in the survey comment section:

I believe that the parameters established for Government negotiators are effective in ensuring that Government negotiators conduct our business in an ethical manner. Due to the Government's emphasis on negotiating "fair and reasonable" contracts, vice knocking the prices down to the cheapest level, Government negotiators target their minimum and maximum positions in a reasonable manner. [Ref. 27]

The overall theme of this question is that if oversight in this case is to be effective, there has to be teaming. Both Government and industry have to be involved in tandem for this to work. This falls right into place with the teaming concepts that have become so popular in recent years such as NAVAIR's acquisition streamlining effort known as Alpha Contracting. [Ref. 22] This could be a mandate that the teaming concepts are becoming more popular with the personnel involved; moreover, teaming is a successful way to conduct business, promoting effective ethical practices through communication.

**2. Survey question # 7:**

Question 7 of the survey was asked to find what oversight or influences would have an effect in driving personnel to the practice of ethical behavior. It reads as follows:

**Your drive to practice ethical behavior in contract negotiations is based on \_\_\_\_\_.**  
**(Choose One)**

- a. Government Regulations**
- b. Company Policy**
- c. Personal Standards**
- d. Religious Scriptures**
- e. Job Security**
- f. Other \_\_\_\_\_**

These choices were designed to provide a broad choice for personnel taking the survey. Most individuals can define in a broad sense what drives them to conduct themselves as they do. Some may be influenced directly by the environment that they currently work in. Others may have a deeper background that causes them to make decisions in a manner that would not matter regardless of the location or environment they were in. The results from the survey are contained in the following comments.

**a. *Government negotiator responses***

Government negotiators felt that Personal Standards (answer "c") were the driving force in practicing ethical behavior in contract negotiations. Statistics from the survey pointed to 51 percent of those polled felt this

way. Thirty-two percent followed with Government Regulations being the driving force in their practice of ethical behavior. Six percent chose Religious Scriptures and the Other category while three percent chose the Company Policy category. Only one surveyed in this category picked the Job Security choice. This seems to fall right in line with the idea that one cannot legislate ethics. It is a personal standard to be maintained. However, with the second largest group choosing the Government Regulations choice it can be inferred that a guiding set of principles is needed for a basis of understanding acceptable ethical behavior. One may or may not be surprised at the lack of response to Religious Scriptures, a trend that seems to emphasize our society's total avoidance to referencing scriptures in any Government capacity. The lack of response to the Job Security choice may be a positive trend that personnel are not scared for their jobs in this category concerning ethical practices.

*b. Government negotiator/former industry responses*

This category found the same trend as previously stated. Sixty percent of these personnel chose Personal Standards as their driving force for practicing ethical behavior in contract negotiations. It is interesting to note that this group did not feel that Government Regulations (21 percent) were as important a choice as the personnel felt that have only been employed by the Government. The other categories were ten percent for Religious Scriptures, four percent for Company Policy and zero response for the Job Security category.

*c. Industry negotiator responses*

Industry has followed the same pattern as the above mentioned groups in that 56 percent of the personnel polled felt that their Personal Standards were driving them to practice ethical behavior. It is probably a natural phenomenon (they are in industry!) that only nine percent of them felt that Government Regulations was the driving factor. Eighteen percent of them felt that Company Policy was the answer of choice. None in this group picked the Religious Scriptures or the Job Security category.

*d. Industry/former Government responses*

This particular group took a different route in terms of responding to this question. Religious Scriptures, Job Security, and the Other category were not selected; however, there was an even distribution among the first three choices of Government Regulations, Company Policy, and Personal Standards (33 percent each). Further analysis may show that once someone has worked for the Government, regulations are important in maintaining a standard of behavior given the end goals.

*e. Question #7 overview*

The majority of the personnel polled felt that ethical behavior is based on their own Personal Standards. It wasn't necessary that the surveyor knew exactly what the personal standard was that was driving people to ethical behavior. It was important to note, however, that regulations were not the driving force in the majority of people's lives. Regulations and guidance are **important** to maintaining a standard and the very indication of this was

made as the choice of Government Regulations and Company Policy came in second place to Personal Standards in this survey. One can deduce that by the Personal Standards response that legislation of ethics will not work. Oversight, however, can be somewhat of a positive influence through regulations and policy that are properly disseminated and enforced.

### **3. Survey question # 9**

Question # 9 in the survey is designed to catch the feeling from contract negotiators as to whether any improvements in ethical dilemmas have occurred from problems in the past, such as "Ill Wind." If occurrences such as the "600.00 dollar hammers" keep happening, can we say that Government oversight is effective concerning ethical practices in contract negotiations? The question reads as follows:

**How would you compare today's ethical practices (1990's) for Government and industry with former practices (1980's)? \_\_\_\_\_**

- a. Better than the 1980's.**
- b. About the same as before.**
- c. Worse than the 1980's.**

The question is once again trying to determine if there is a pattern in the success or failure of oversight effectiveness from past incidences and their effect on the contract negotiator.

*a. Government negotiator responses*

The Government negotiators have submitted almost an even split between the "Better than the 80's" and the "About the same as before" response (44 versus 50 percent, respectively). There was only a six percent response to the "Worse than the 80's" response. One can deduce that there is moderate improvement as a result of tighter regulations; however, the majority still feels that the ethical practices are about the same. The message sent here would underline that there is still a need for improvement in ethical practices in contract negotiations by comparison with the past.

*b. Government/former industry responses*

This particular group, by overwhelming majority, felt that the ethical practices of today are better than those of the previous decade (55 percent). Twenty-four percent felt that practices were about the same as before along with 21 percent acknowledging the current practices as worse than the 1980's. Further analysis may show that those personnel who were involved with both Government and industry have a more even-keeled attitude toward either side being more ethical than the other.

*c. Industry negotiator responses*

Industry negotiators participating in this survey have a more positive outlook, as evidenced by their 82 percent majority. Their feelings are that ethical practices of the 1990's are better than those of the 1980's. Eighteen percent had felt that there was no improvement by selecting the "About the same as before" response. As far as industry

goes there may be a trend that oversight is more effective in this arena than in Government. Further analysis in this survey has shown that only 60 percent of those Government personnel polled have an ethics code that they know about in their commands whereas industry falls into the 90 to 100 percent range in this category.

*d. Industry/former Government responses*

This cross-section of surveys shows the majority feels that ethical practices of the 1990's are better than those of the 1980's. Thirty percent of this group responded that there was no improvement, however, no one in this group said that it was worse than the 1980's.

*e. Question #9 overview*

For the most part the Government feels that the ethical practices are either the same or better now than in the 1980's. Industry has made a definite decision from these surveys that the ethical practices are on the upswing.

**C. CONCLUSION**

From evidence submitted through these particular questions of the survey, oversight effectiveness is not deficient, however, there is a need for continued emphasis. Teaming coupled with clear guidance will act as a catalyst for people to maintain their personal standards and thus keep oversight as an effective tool in positive ethical practices. Legislation will not establish ethics; only acceptable ethical behavior will be established. Only continuous training and the pushing of accountability to

lower levels will be the process that Government and industry will use to practice "Oversight Effectiveness."

Since it is paramount that organizations have a policy or guidance to be effective in the oversight arena, it is necessary to analyze the Government/industry policy implementation. The next chapter, Chapter V, does just that.

## **V. ANALYSIS OF GOVERNMENT/INDUSTRY POLICY IMPLEMENTATION**

### **A. INTRODUCTION**

Policy implementation is important to the success of a program designed to encourage ethical behavior. Recent years have brought numerous programs to light to encourage or even demand ethical practices in contracting and specifically contract negotiations. Chapter III was basically an analysis of the requirements, statutes, and policies of the Government side. There is also a need to examine some of the industry policies in this analysis. This chapter will do that and then lead the reader into the ethics policy implementation evaluation of the survey.

The survey addressed one question by asking all groups if they had an ethics code in their organization. The second question directly addressed the surveyed group's reaction to the Government's policy implementation of the Joint Ethics Regulation.

First, various corporate policies that have been recently submitted along with surveys for the purpose of research and examination include the following companies:

- (1) Hewlett-Packard Company
- (2) Eastman Kodak Chemical Company
- (3) Motorola
- (4) Magnavox

### **B. CORPORATE ETHICS POLICIES**

#### **1. Hewlett-Packard**

Hewlett-Packard (HP) was one of the first corporations to respond to the survey and send with it a copy of their company ethics policy. Along with this policy came a very

informative letter indicating where some of the survey question answers could be found within their literature. An aggressive stance has been made not only to address ethics but also address such practices as ethical conduct of negotiators in foreign countries.

Because Hewlett-Packard is a worldwide organization, ethical behavior must take into account the customs acceptable in every country in which HP has a presence. Therefore, ethical behavior may be based on individual country regulations, personal standards, and national religions as well as the Hewlett-Packard Standards of Business Conduct. [Ref. 13:p. 1]

Hewlett-Packard was also clear to understand that a Standards of Business Conduct alone is not necessarily an ethics policy. They were quick to respond that in their published Standards of Business Conduct was included an actual ethics code. A copy of a letter from Lew Platt, Chairman of the Board, states the following company line on ethics:

The Standards of business conduct are intended to inform all employees of their legal and **ethical** obligations to HP, its customers, competitors and suppliers. Simply stated, every HP employee must comply with these standards. I expect all managers to review these standards with their employees every year in order to answer questions and to ensure compliance. Failure to comply with these standards is regarded as misconduct and may result in termination of employment. Sometimes you may believe an HP employee has engaged in **unethical** or illegal conduct. In this situation **you are expected** to notify a manager or the Personnel Department (emphasis added). [Ref. 13:p. 2]

In the analysis of this policy it was quite interesting that there was not an option in deciding whether to report an ethics violation. The language was clear that employees are **expected** to notify if there is a violation. That clearly

directed the action to be mandatory. At this point, actual monitoring of the policy would be impossible; however, the very inclusion of these statements indicates that HP is serious about ethical practices.

Hewlett-Packard's Policy includes sections addressing such subjects as Conflicts of Interest, Handling Company Information, Handling Company Assets, Multiple Relationships, Conduct Involving Relationships, Obtaining Competitive Information, Conduct Involving Customers, and Government Procurement. One of the specific regulations is the company mandate to follow Government procurement laws and regulations:

**What responsibility do I have to follow procurement laws and regulations?** Many Government agencies have detailed regulations about procurement. These regulations apply to direct sales to companies or individuals that supply products or services to the Government. In addition to the rules described below, these regulations cover the need to disclose certain pricing and product information, restriction on the use of consultants, and prohibitions against improperly receiving or using confidential procurement information. You are expected to adhere to these regulations (emphasis added).

[Ref. 13:p. 5]

In this analysis of the HP program, research has found that this company is totally dedicated to the practice of maintaining ethical behavior and especially to those requirements mandated by the Federal Government.

## **2. Eastman Kodak Chemical Company**

The Eastman Kodak Chemical Company Business Conduct Guide covers a myriad of subjects to include Conflict of Interest, Inside Information, Customer and Supplier Relations, Gifts, Antitrust Laws and other "Standards of

Conduct" subjects. The company does not address the specifics of ethics as the Hewlett-Packard company did within the scope of information sent. The only reference to ethics is on page 1 of the Business Conduct Guide.

Employees must maintain the highest ethical standards in the conduct of company business worldwide so that they and the company are above reproach. [Ref. 10:p. 1]

Only once more is the word "ethics" used at the end of this guide. However, Kodak does have a mandatory reporting policy concerning apparent or real ethical violations. The language is different than Hewlett-Packard's when it comes to reporting violations. The words used tell that the employee is "responsible for" versus "expected to" report such matters and is stated in the following:

Employees who are aware of suspected misconduct, fraud, abuse of company assets or other violations of the company's business conduct are responsible for reporting such matters to their line management or, if they prefer, to the company's General Auditor or a member of local internal auditing management. [Ref. 10:p. 7]

Kodak's program is well-established by the typical subjects to be addressed in their policy; however, they do not separate the idea of ethics or ethical conduct from a simple "Standards of Conduct."

### **3. Motorola Government and Systems Technology Group**

Motorola Government and Systems Technology Group has demonstrated an interesting method in the study of ethical practices within the conduct of business. First, they do have a Code of Conduct that covers the necessary subjects to prevent illegal conduct. Motorola is specific in separating

the subject of business ethics and standards of conduct as was Hewlett-Packard.

The following statement of business philosophy and objectives applies to all components of our Company. It is intended to be read and applied as a part of and supplementary to our already widely disseminated statements on the subject of business ethics and standards of conduct set forth in our "For Which We Stand Document." [Ref. 17:p. 1]

The difference in this analysis is that Motorola has established not only the difference between ethical practices and standards of conduct but also a specific "Ethics Review Committee Charter." The Committee's objective in its charter is stated in the following:

The Committee reviews matters on its own initiative as well as matters referred to it by the Motorola Law Department or by any other internal or external source, which raise significant ethics or compliance issues in connection with GSTG's (Government Systems Technology Group) business operations. It is the Committee's further responsibility to determine [with the concurrence of the Motorola Business Ethics Compliance Committee (BECC) as appropriate] corrective action (including employee discipline, adjustment of contract charges, systematic or other procedural changes, and reporting to appropriate Government officials) and to assure that all such action is carried out in a timely fashion. [Ref. 18:p. 1]

Motorola is facing the ethics issue head on in this very detailed and aggressive policy. The teaming effort, involving different representatives from top management such as Human Resources, Finance, and the General Manager, should help to focus on these all important issues of ethical behavior.

#### 4. Magnavox Electronic Systems Company

Magnavox has also put forth an aggressive program to deal with business ethics. Within this analysis the difference with this company has been the employment of a corporate "Director of Ethics."

It was the intention of Magnavox management to create a new level of independence by utilizing a non-employee with senior officer corporate credentials, reporting directly to the President, to manage the Ethics Program with full authority emanating from the Board of Directors. This approach has incorporated an ability to administer the Ethics Program from both a non-affiliated and critically-constructive perspective. The independence inherent in this approach has noticeably increased the employees' trust and confidence in the administration of the Ethics Program. [Ref. 16:p. 2]

The Ethics Program under the leadership of the Director of Ethics takes its lead from the Department Of Defense Federal Acquisition Regulation Supplement (DFARS) 203.7000 which makes it "incumbent upon companies with whom the Government contracts to carry out their activities with the highest degree of fairness, honesty, and integrity." [Ref. 16:p. 3] Magnavox even has a newsletter dedicated to ethics called the "Business Conduct & Ethics Newsletter." Detailed flow charts of the steps or processes to follow by company personnel are published in the policy instruction.

Magnavox is certain of its priority system when it comes to ethical practices. It best can be described in the following:

While conducting business, Magnavox must maintain an uncompromising level of integrity and a good working relationship, based on honesty and fairness, with its customers and suppliers. This assures that we are providing our customers with quality products at competitive costs. This is

**especially important because our major customer, the U.S. Government, has the responsibility to its citizens to demonstrate that tax dollars are spent wisely on competitively priced, quality products (emphasis added). [Ref. 16:p. 10]**

Magnavox is a good example where, according to their program, they understand the difference between ethics programs/policies and standards of conduct. Further topics for thesis discussion may be the specific success of the policy implementation of the Magnavox Ethics Program.

#### **C. OVERVIEW OF CORPORATE ETHICS POLICIES**

HP, Motorola, and Magnavox have much different programs from Kodak. Kodak, like the other three, has a Standards of Conduct policy, yet, it does not communicate the idea that the practice of ethics is a separate issue from just following a set of rules set forth by a corporate headquarters. The difference here is that HP, Motorola, and Magnavox isolate their Standards of Conduct from their Ethics Policy by calling ethics a process where right decisions are made and correct actions are taken. At least from this research, HP, Motorola, and Magnavox were willing to not only define the difference but were also able to show part of how they train. The three companies had fairly new programs in place (within the last three years).

Next is an analysis of the survey questions that address the actual policy implementation successes or failures from the viewpoint of the different negotiator groups.

## D. POLICY IMPLEMENTATION ANALYSIS

### 1. Ethics codes

Survey Question #5 addressed ethics codes of organizations. The purpose was to ask if an organization had an ethics code that was separate from "Standards of Conduct." Government Organizations are required to have this published as a separate program. The question was also designed to indicate whether an organization had any kind of program at all that the employee was readily familiar with. The question reads as follows:

**Do you have an ethics code in your organization?**

**Yes \_\_\_\_\_ No \_\_\_\_\_**

**(To Clarify: Standards of Conduct is not an ethics code)**

#### a. Government negotiator responses

This particular group responded in a fashion that was not expected. Forty percent of the Government negotiators polled indicated that they did not have an ethics code in their organization. This would clearly indicate that the program implementation within the Government needs some work. The new Joint Ethics Regulations, a complete policy in one place, should have made reference in implementation easier. (Everything is in one place.) A later examination of whether the JER has been implemented will indicate a consistent pattern within this model.

***b. Government/former industry negotiator responses***

In this area only 17 percent of those polled claimed they did not have an ethics code for their organization. With the analysis of the previous corporations' policies, it may be an indicator that a more compact policy makes it easier to understand and therefore easier to expose. It could be possible that individuals who have previously worked in industry were more aware of these programs and therefore translated that experience into their Government service. It could also be a factor that a corporation's easy "hire and fire" policies may make it easier for employees to observe quicker consequences for their bad ethical decisions than those only employed by the Government. The Government, having an ethics program in place, is plagued with rules and guidance that make separations a slow process.

***c. Industry negotiator responses***

The trend is predictable in this case; eight percent of the industry negotiators polled indicated that their organization did not have an ethics policy. To go on, the Industry/former Government negotiators responded with 100 percent of the personnel polled as having an ethics policy.

***d. Question #5 overview***

The conclusion can be made that there is a need to push the establishment of an ethics code in each Department of Defense organization. The programs are out there and in

place. There just needs to be better dissemination of the reference materials.

## **2. The Government's policy implementation**

Since the approval of the Joint Ethics Regulation in 1993 it has been required to be disseminated to all DOD components. The Regulation, as mentioned before, is all-encompassing. To further evaluate the success of its implementation, question #13 of the survey addressed the subject of the Department of Defense's ethics policy.

Survey question # 13 reads as follows:

**Is the Government's policy implementation (DOD's Joint Ethics Regulation DOD 5500.7-R) of ethical standards in contract negotiations\_\_\_\_\_.**

**(Choose One)**

- a. Clear**
- b. Unclear**
- c. Effective only with Government negotiator's side**
- d. Effective with Industry negotiators.**
- e. Effective with both.**
- f. What the heck is this regulation?**

The choice of answers was selected to allow for a possible broad set of outcomes that range anywhere from no knowledge at all to some knowledge, to complete familiarity with the guidance. The instruction itself is not solely concerned with just contract negotiations, but with a broader policy covering operations within the Department of Defense. These ethical policies can be applied to contract negotiations. As described in the previous chapter, however, there is a need

for local guidance concerning the subject of ethical practices in contract negotiations.

*a. Government negotiator responses*

The response from the Government negotiators fell into the same pattern as the 40 percent that responded that they did not have an ethics code. Forty-one percent of those polled in this category responded with the "What the heck is this regulation?" response. It is clear that there is still a need to improve on the familiarity with this instruction. It explains the type of local ethics programs that are to be put into place in the Department of Defense. Once more, it also serves as a ready reference for all materials associated with accepted ethical practices and decision making. Concerning the remainder of answers, 21 percent of this group responded saying the instruction was clear. Seventeen percent stated that it was unclear. Twelve percent of these negotiators responded that the instruction was effective only with the Government negotiator's side and nine percent stated that the instruction was effective for both Government and industry negotiators.

*b. Government/former industry negotiator responses*

This group responded with a more positive reaction in that 31 percent felt that this instruction was effective for both Government and industry negotiators. Twenty-four percent responded that the instruction was clear. Twenty-eight percent came back with the "What the heck is this regulation?" choice. Three percent stated that it was unclear and 14 percent felt it was effective only with the Government negotiators side. The larger percentages of

negotiators felt the instruction was either effective or clear. This analysis shows that those who were previously employed by industry may have a healthier respect for seeking out guidance and using it than those who were never employed by industry.

*c. Industry negotiator responses*

It would only make sense that 62 percent of this group responded with the "What the heck is this regulation?" choice. If the dissemination amongst the Department of Defense entities was not successful then it certainly would not be within this group. One-fourth responded that this was effective for both sides along with 12 percent saying it was only effective amongst the Government negotiator side. Analysis of this group shows that the industry negotiator is not familiar with this regulation. A key idea from this would be for Government offices to conduct seminars with industry negotiators and include a JER familiarization section in the program.

*d. Industry/former Government responses*

This cross-section of negotiators polled revealed that only 33 percent were not familiar with the implementation by the "What the heck is this regulation?" response. Thirty-three percent also responded that the regulation was clear along with 22 percent saying the regulation implementation was effective with both Government and industry negotiators. Eleven percent stated that it was effective with only industry negotiators and this was the only category of negotiators that responded to choice "d." By virtue of the one-third of this group that is not

familiar with the regulation, it is paramount that a better plan for familiarity be submitted to improve dissemination.

#### **E. POLICY IMPLEMENTATION OVERVIEW**

From the examination of the Joint Ethics Regulation in Chapter III and the analysis of various policies in the public sector at the beginning of this chapter, it is evident that there are programs in place to meet ethical behavior requirements. However, the survey, for the most part, demonstrates that the policies are in need of better dissemination or improvements. The majority of the Government personnel do not have a local ethics code in their commands and are not familiar with the all-encompassing JER to implement it. The private sector seemed to have a better grasp on a local policy, however, there is still a need for improvement.

#### **F. CONCLUSION**

Contracting shops are in need of ethics policies of which all members must have complete knowledge. There is a trend that the only way to do this is to train over and over again, and not just post a policy to the back of a door or in a thick black binder. The need for training is the essence of developing a model for ethical practices. Prior to submitting a new policy model, one must examine the hindrances that exist in keeping what has already been disseminated (ethics policies) from the knowledge of the employee. This may be due to the attitude of the employee. Chapter VI examines the attitudes of contract personnel towards the negotiation process and the use of ethical practices.



## **VI. ATTITUDE OF NEGOTIATORS TOWARDS ETHICS**

### **A. INTRODUCTION**

To evaluate the current state of the ethics culture in contract negotiations one must perform analysis from the feedback submitted in the research survey. Four of the multiple choice questions from the survey were generated specifically for this analysis along with a fifth one that solicited actual written comments as an option.

One area that was evaluated was the current definition of ethical behavior held by the four groups of negotiators polled. Another aspect of analysis was the feeling regarding the current ethics culture as to which side (Government or industry) is more ethical than the other. Furthermore, there was a need to test the primary features in organizational cultures of Government and industry that have driven motivation towards ethical behavior. The final multiple choice question was designed to find the priority of the essential elements of what is perceived as ethical behavior in contract negotiations. Those surveyed were asked to rank by order of importance such ideas as truth, honesty, communication, equity, and fairness.

The last area for analysis will be an examination of the various written comments submitted by the negotiators. This particular section will cover comments and ideas solicited for the improvement of ethical practices in contract negotiations.

### **B. ANALYSIS OF THE NEGOTIATION CULTURE**

1. **Definition of ethical behavior**

a. **Survey question # 6**

Question #6 was solicited for the purpose of finding the definition of ethical practices in contract negotiations. There have been several different definitions depending on who was questioned. Question #6 was designed to only have four choices to evaluate and see if negotiators would hold to a certain pattern. The question reads as follows:

**Your definition of ethical behavior in contract negotiations is \_\_\_\_\_.** (Choose One)

- a. The practice of doing what is right.
- b. The practice of doing strictly what the law dictates.
- c. The practice of meeting a goal without offending the other team.
- d. Other \_\_\_\_\_.

b. **Government negotiator responses**

The Government negotiator responses were a 52 percent majority for the practice of doing what is right. Nineteen percent responded with doing what the law strictly dictates while 15 percent stated that it was a combination of the first two choices. Thirteen percent responded with the "Other" category that represented a myriad of ideas. One percent responded to the practice of meeting a goal without offending the other. Some written comments included in the "Other" selection include the following:

- (1) What is fair and reasonable
- (2) Never compromising personal standards

- (3) The practice of Truth in Negotiations (PL 87-653)
- (4) The best interest of the Government
- (5) Avoid perceptions of impropriety
- (6) The practice of attaining what is equitable.

These responses alone can demonstrate the perceptions that contract negotiators have that may not be the ideal definition. One would be hesitant to hold that if an "equitable" solution is obtained in a negotiation then it must be ethical, or that relying on TINA (PL 87-653) for all ethics guidance in contract negotiations could be questionable. It may boil down to reemphasizing training and a familiarization with ethical practices to bring out the essential definition of ethical decision making.

*c. Government/former industry responses*

This response took the same direction as above in that 57 percent or the majority selected "the practice of doing what is right" response. This was followed by 29 percent selecting the "other" category and 13 percent selecting a combination of responses "a" and "b." Ten percent of this group also responded to the practice of doing what the law strictly dictates. One particular negotiator submitted in the written comments that the definition of ethical behavior is the "taking of action that one feels comfortable in disclosing to the other side." This statement is acceptable; however, he should have better defined what "kinds of action" he would take that he was comfortable in disclosing to the other side.

*d. Industry negotiator responses*

The practice of "doing what is right" received an 81 percent selection rate. The rest of the group chose the "d" answer or "Other" choice.

*e. Industry/former Government*

"The practice of doing what is right" was the choice by the majority (51 percent) in this group. Thirty percent picked the "Other" category along with 16 percent evenly distributed between answers "b" and "c."

*f. Question #12 overview*

The overall results of this question point to the understanding of ethical behavior as being the process of doing what is right. There was neither a 100 percent consensus in this category, nor were there majorities in any of the other selections. Even though only one answer was to be selected, it made sense for those who answered in a "both 'a' and 'b'" mode. The practice of doing what is right within the bounds of the law is good; however, contract negotiators could be faced with scenarios or situations that may not specifically be illegal, but are still ethical dilemmas. It cannot be overstated that ethics cannot be legislated.

Written comments that were alluded to in the analysis of the Government negotiator state the need for more training in the basics of the "what is ethics?" question.

2. **Government and industry: which is more ethical?**

a. ***Survey question #8***

This question simply asks the negotiators for their opinion of who is more ethical: Government or industry. The surveyed group was also given the option to say the two could not be compared. The question reads as follows:

**Does the current ethics culture of contract negotiations in Government and industry indicate that \_\_\_\_\_.** (Choose One)

- a. **Industry is more ethical.**
- b. **Government is more ethical.**
- c. **About the same.**
- d. **Cannot be compared.**

b. ***Government negotiator responses***

This sector responded with 40 percent saying that the two entities were about the same. In addition, 30 percent of the loyal Government negotiators responded that Government is more ethical. Twenty-eight percent stated that the two could not be compared. It would have been interesting to ask the 28 percent group why the entities could not be compared. To close the gap, only two percent of the Government negotiators stated through the survey that industry is more ethical.

*c. Government/former industry responses*

The survey in this case showed that 45 percent chose the Government as more ethical. It could be that the entities are so different that experienced negotiators would think in this fashion. Thirty-one percent stated that Government and industry are about the same while 24 percent felt that the two cannot be compared.

*d. Industry negotiator responses*

The industry negotiators, by 81 percent, felt that the two entities are about the same in terms of being ethical. The rest of this group, at 18 percent, felt that industry is more ethical.

*e. Industry/former Government responses*

The opinion of this group sided with the selection that industry and Government are about the same ethically. The percentage went at 70 percent for answer "c" or "about the same", 20 percent were for industry being more ethical, and 10 percent called for the non-comparison response.

*f. Question #8 overview*

Overall the feeling from the negotiators was that the two entities were about the same ethically. There were the few that felt the particular environment they were working in was more ethical. Some of the comments in the written portion of the survey alluded to the attitude that some felt they were more ethical than the next person.

### 3. Organizational features of the negotiating culture

#### a. Survey question #10

This question was designed to examine some of the features that may result from the organizational culture. These features may also drive the motivation towards ethical behavior. The question reads as follows:

What is the primary feature in the organizational culture of Government and business that drives a motivation towards ethical behavior? (Indicate by placing a "G" for Government or "I" for Industry that would best apply to each statement.)

a. A stringent set of rules. \_\_\_\_\_

b. A profit making machine. \_\_\_\_\_

c. Organization free to make its own judgments. \_\_\_\_\_

d. Negotiator free to make his/her own judgments. \_\_\_\_\_

#### b. Common trends

All groups polled felt, by a majority, that the selection "a", a stringent set of rules, completely applied to the Government. Only a small percentage surveyed felt that this was applicable to industry.

Selections "b" and "c", "a profit making machine" and an "organization free to make its own judgments" respectively, were selected as applicable to the industry side. The majority of those polled ranged from 80 to 100 percent selection as applicable to industry.

*c. Government and Government/former industry responses*

Both of these groups had an almost even distribution among the choices. About one-half of this group said they were free to make their own judgments as negotiators, whereas the other half felt the industry counterpart had the advantage of choice.

*d. Industry and industry/former Government responses*

This cross-section felt (by the majority) that selection "c" was in their favor in having more flexibility to make negotiation decisions. Only 20 percent of the industry/former Government group said that Government had more flexibility.

*e. Question #10 overview*

In this case it is summarized that the Government is given the reputation of having a stringent set of rules. Industry, thought of as a profit making machine, is an organization that is free to make its own judgments. The majority of those polled also felt the industry negotiator, alone, is free to make his/her own judgments.

These findings may be significant in evaluating whether the Government needs to push accountability to a lower levels. These statistics show that the Government negotiator felt more restricted. A combination of ethics training and increased accountability may aid a negotiator in being more creative or energetic in his/her job. One must also keep in mind that the Government's reputation for having stringent set of rules may be a driving factor in better ethical behavior within that organization.

#### 4. Most essential elements in ethical behavior

##### a. Survey question #11

This question was to find the priorities of the contract negotiators as to the essential elements of ethical behavior in the conduction of contract negotiations.

The most essential elements of ethical behavior in contract negotiations are\_\_\_\_\_.

(Rank them 1,2,3,4,5 etc)

- a. Truth, Honesty
- b. Communication
- c. Equity, Fairness
- d. Driven by past catastrophes.

The last choice was designed to see if there were any true crisis managers that were only driven by bad events. The results were common across the board.

##### b. All negotiators responses

The common trend with all the groups generated a ranking in order as follows except for the industry-only negotiators:

- (1) Truth, Honesty
- (2) Equity, Fairness
- (3) Communication
- (4) Driven by past catastrophes

Industry-only negotiators had put Equity, Fairness category above the Truth and Honesty category. This turned out as an interesting factor in light of their business goals. It needs to be noted that although the ranking of the concepts fell in the pattern listed above, there were very tight point spreads between the Truth, Honesty and Equity, Fairness categories. One can note that not all negotiators are carrying the honesty quality in them as first and foremost to the negotiation table. Government negotiators must be careful in putting honesty behind fairness; they should read the requirements set forth in Chapter 12 of the Joint Ethics Regulation. It is specific in addressing that the conduct of business will be done in an honest fashion. This should not exclude negotiations.

## **5. Improvement of ethical practices**

### **a. Survey question # 14**

This part of the survey was optional for the participants. It was designed to be optional to keep the survey short, and to mainly keep the attention of those who were participating. Those who did respond would do so by giving positive feedback on needed improvements. The question reads as follows:

**Comments/New Ideas: (Optional)**

**From your perspective, what would be the best course of action that the Government could take to improve on ethical practices in contract negotiations?**

***b. Analysis of responses***

From the 89 responses to this question, the most common theme in the comments was the need to conduct continuous training on the subject of ethics. The continuance of proper whistle-blowing programs was also mentioned as a good tool. Another common trend was to encourage the proper evaluation of personnel before they are hired to become contract negotiators. The hiring of ethical people from the beginning will make the process go easier. How this can be done is a topic for further thesis research.

Another issue that the personnel complained about was the massive amounts of regulations already in place to address contract practices. Some of those polled felt that this survey was generated to preempt another Government Instruction. "Don't kill me with the life boat," a person said in the written comments.

One common trend communicated in the survey was concern with being seen as unethical. Respondents thought that the very reason they were filling out the survey was because someone was looking at them with questionable feelings about their honesty. In addition, other negative comments conveyed there was no need for a survey like this since there are "no problems" with ethical practices.

The main theme overall was the need to continue to train on the subject of ethical practices in contract negotiations and to continue the programs in place to provide outlets and counseling for those involved in potential or actual ethical dilemmas.

**C. CONCLUSION**

The common trends in this analysis are the attitudes of the contract negotiators towards ethical practices. Most

felt that ethics is the practice of doing what is right. They also felt, for the most part, neither industry nor Government is more ethical than the other. Government negotiators do feel more restricted in their judgment-making ability and have the attitude that Government service is driven by a stringent set of rules.

Truth and Honesty were the number one elements that the negotiators deemed essential to ethical behavior. This, however, was followed closely by Equity and Fairness. This could be a topic for more analysis to see just how many negotiators will put honesty after other categories.

So far, the thesis has utilized Chapters III, IV, V, and VI as an analysis of data. Now complete, a new policy can be formed using the data. Chapter VII does that followed by conclusions and recommendations.

## VII. CONCLUSIONS AND RECOMMENDATIONS

### A. SUMMARY OF THE PRIMARY RESEARCH QUESTION: THE ELEMENTS AND ACTIONS TO DEVELOP AN ETHICS MODEL

The research conducted in this thesis found that many of the Government buying offices did not have a local ethics policy. Further research revealed that many of the personnel did not know of the Joint Ethics Regulation that housed the Department of Defense ethics policy requirements. More training and implementation is needed.

The following are the elements and actions necessary to develop an ethics model that concerns the policy, procedures, and practices in contracting negotiations as they might apply in both Government and industry that were asked in the Primary Research Question.

The considerations in developing this model were the basic ethical subject ideas and guidelines that were the result of the background research, Government and industry policy analysis, and the survey. The background research, in Chapter II, revealed some of the most common ethical dilemmas that face contract negotiators. The Government and industry policy analysis in Chapters III and V respectively revealed shortfalls that are in need of improvement. The survey analysis throughout the thesis revealed subjects for addressing the current ethics culture in contract negotiations. Each of these has served to make up the essential elements of an ethics model used in testing and evaluating the ethical culture of an organization.

#### 1. Common ethical dilemmas to be avoided

The following is a list of dilemmas that purchasing personnel should watch out for during the conduct of

contracting and negotiations:

- (1) The exaggeration of a buyer or supplier's problem to achieve a desired outcome.
- (2) Giving preferential treatment to purchasers or suppliers that top management prefers.
- (3) Allowing people's personalities to influence buying/selling transactions.
- (4) Allowing the conduction of reciprocity.
- (5) Seeking and giving competitor information on an illegal basis for gain.
- (6) Free gifts, meals and trips.
- (7) The showing of bias against companies/people that circumvent purchasing.

a. *Ethical dilemmas that need explanation*

(1) Exaggerating a position to obtain a certain outcome is forbidden. A negotiator may withdraw, holdback, or overemphasize his position to get what he desires in the end. All kinds of information in this case can be "stretched" to obtain a solution.

(2) Preferential treatment of vendors prior to and during negotiations can present various problems during the business dealings even though the vendor happens to be one of the best. One may still encounter possible confrontations from competitors that feel they are being misrepresented or ignored.

(3) Personality influence is where one negotiator can favor a certain other during the selection of a company to possibly enter into negotiations. This practice like the preferential treatment aspect, should be completely avoided.

(4) Reciprocity has been practiced in the past during negotiations. It could be illegal to use it in the course of completing negotiations because of the resulting restrictions that affect competition.

(5) Seeking and giving competitor information on a illegal basis for gain must not be done. This may also fall under the category of the negotiator using his buying power to gain concessions and/or information in a manner that may destroy reputations and future relationships with companies.

(6) Free gifts, meals, and trips can cause a conflict in the preparations for and actual negotiations. Some buying organizations allow for certain gifts at a certain value; however, it is recommended that it be avoided altogether to prevent any conflicts.

(7) The last of the seven common areas is the showing of bias against companies/people that circumvent the purchasing system. This clearly could bring an embarrassing situation to a negotiating table if this kind of behavior was going on behind the scenes. Such behavior could be the contact between a Government and industry negotiator outside the normal, acceptable, and legal negotiation channels that results in a position or agreement that otherwise would never have been reached.

*b. Possible negotiation pitfalls*

These common areas that were cited by the various researchers in Chapter II have negatively effected negotiations if used in the wrong way. They can even be simplified into more general areas. They are as follows:

- (1) Selective Disclosure and/or Exaggeration
- (2) Misrepresentation
- (3) Deception
- (4) False Threats
- (5) False Promises
- (6) Falsification

**2. Recommendations to improve ethical behavior via the model**

*a. Ethics counselors*

Ethics counselors should be employed in every organization to assist with the giving of advice on ethical dilemmas. It is advisable that they be an attorney yet they cannot separate their duties involving the Attorney-Client privilege. The ethics counselor should have no other duties to interfere with his responsibility for giving ethical advice.

*b. Acknowledgement of understanding*

The completion of ethics training should not only incorporate documentation of completion. It should also include a signed document with the member acknowledging the understanding of the training and knowledge of the resources available to obtain answers to ethical dilemmas through guidance and regulations. Also, it is paramount that one knows

the exact location of the Joint Ethics Regulation. All are held accountable.

*c. Promote communication/cooperation*

A good policy is to be able to promote communication and cooperation between Government and industry concerning ethical practices. If this does not occur then entities may have the perception that one is more ethical than the other. Another reason for communication has been to promote an understanding of the pressures facing both Government and industry.

*d. Personal standards*

The success of ethical practices is a combination of maintaining high personal standards and being familiar with written guidance within the Government. All personnel should be familiar with ethics guidance and hold themselves to the highest standard of conduct.

*e. Reporting violations*

Each command should have a simple avenue to either document or report violations. Having an ethics counselor available that is separate from the legal counsel will facilitate the process of reporting. All personnel should be aggressive in catching ethical violations by having the following mandatory options:

**If an ethics violation or the appearance of an ethics violation has taken place, the employee should be required to at least counsel the perpetrator and/or report the violation.**

***f. Essential elements of practice***

The most common elements to hold in the conduct of ethical behavior in contract negotiations are Truth, Honesty, Equity, Fairness, and Communication. A lack of any of these may prove to be disastrous to the future of a contract.

**B. SUMMARY OF SUBSIDIARY RESEARCH QUESTIONS**

A study of the principal ethical considerations in contract negotiations has revealed many areas for concern and improvement. The Government cannot legislate ethics yet it can present guidance to encourage ethical behavior or present laws to punish unacceptable behavior. The background research, analysis, and surveys have shown that the ethics culture in contract negotiations is a sensitive one. This involves the highest level of emotion, as indicated by some who have responded to the survey research.

**1. Principal ethical considerations**

The principal ethical considerations in contract negotiations in developing this model concern the study of the effectiveness of the policies, procedures and resulting subject matter which drive the culture towards ethical behavior. Ethical behavior is defined by the surveyed personnel as the practice of doing what is right and is driven by the personal standards that each individual negotiator holds.

**2. Current ethics culture**

The current ethics culture finds that Government and industry negotiators feel both sides are as ethical as the other. Both sides acknowledge that the culture is not perfect and is always requiring additional training.

### **3. Best model to clarify the ethics culture**

The best model to clarify the ethics culture would include an examination of the negotiators at various offices within the Defense Contract Management Command (DCMC) and their counterparts in industry. This examination is needed to ascertain the policy and procedures of the organizations coupled with the opinions of the negotiators about themselves, their environment, and their views of what ethical practices are.

### **4. Differences between Government and industry concerning ethical behavior**

The negotiators felt that the main differences that drove ethical behavior were involving the Government as an entity "full of rules." Industry, a profit making machine, was an organization that had more flexibility to make judgments. Both Government and industry negotiators felt that as negotiators, each was flexible to make its own judgments.

### **5. Essential elements concerning ethical behavior**

The following are ranked in order as the essential elements of the model concerning ethical behavior in contract negotiations by the personnel surveyed:

- (1) Truth, Honesty
- (2) Equity, Fairness
- (3) Communication

## **C. FINAL RECOMMENDATIONS**

The following is a list by topic of the recommendations upon the completion of this thesis. Each one is vitally important to the promotion of ethical practices in contract negotiations.

## **1. Training**

The research revealed through the surveys that training on the subject of ethics in negotiations is in need of improvement. Not only did the written comments received indicate that more instruction was needed, but the multiple choice sections revealed this also. Large groups of personnel surveyed indicated that their organizations did not have an ethics policy. They also revealed a lack of knowledge of the existence of the Joint Ethics Regulation. What is worse is those who did not think they had an ethics policy and just did not know one existed.

It is a recommendation that every member of the contracting commands be polled to test their current knowledge of the JER. This information would be used to formulate a training program to meet the needs of each command.

Further thesis research could be a comparison of the commands that do not have ethics policies with those that do measured against the number of ethics violations that have occurred in each command.

## **2. Ethics policies**

The research revealed that every command needed a local ethics policy for practice and reference. It was already revealed that there were shortfalls that not all Government buying organizations have a local policy. The subject is all important and more emphasis needs to be made on providing guidance. Personnel surveyed were confused that the Standards of Conduct is not an ethics policy. The practice of ethics is more than just the following of rules.

It is recommended that there be a more rigid strategy to insist commands have a local ethics policy and to require all personnel to acknowledge in writing the contents and location of such a policy.

Further thesis research of local policies could be a comparison of those commands who are or are not in possession of a policy and the level of concern that each of their contracting personnel has in terms of accountability being pushed to the lowest levels.

### **3. Cooperation/communication**

The study of the culture of ethical behavior revealed that many of those surveyed felt that neither Government nor industry is more ethical than the other. Further study revealed that the ethical practices of the 1990's are the same as the 1980's. One would have hoped for the feeling of improvement to be overwhelming. The fact that it did not indicates a necessity to improve cooperation between Government and industry negotiators. Written comments suggested joint training and seminars should be held with the two factions together. Promoting an understanding of each side through communication will facilitate the contracting process and by some degree may reduce certain tensions that may exist due to lack of understanding of mandatory and accepted ethical behavior.

A further recommendation for thesis study may be an analysis of those entities that feel more ethical than the other as compared with their counterpart's view. This would also include research as to the cause of these ill-feelings.

### **4. Accountability**

The fact that organizations are lacking in ethics policies may be an indicator that personnel are not clear as to what they may be held accountable for. The restructuring of organizations using the teaming concept helps each member to hold each other accountable for their various duties. All DOD personnel involved in contract negotiations are accountable to

their superiors for the ethical practices that they perform. Some survey respondents stated in the written comments that accountability is the driver for ethical practices in contracting organizations. Pushing accountability to the lowest levels can aid development of the "personal standards" that a negotiator maintains. These "personal standards" are a significant base for ethical beliefs.

Further thesis research in this area may entail the study of the Defense Contract Management Command's reorganization through the teams formed at its Defense Contract Management Area Operations (DCMAO) Offices and its effect on ethical practices.

#### **D. FINAL THOUGHTS**

Ethical behavior will always be an area for constant evaluation. It, in so many ways, can determine the success or failure of an organization. The thought of an honest mistake is much different than the thought of a dishonest one. Organizations cannot demand ethics. They can only provide the guidance to let each individual negotiator develop his/her own standards, through careful education and training. Negotiators cannot just be concerned about the end result in the process of contracting. The process can be long. What happens in between the source selection decision and contract closeout can make all the difference in the world for a negotiator. Ethical practices from beginning to end are a must in the art of contracting and negotiations. Ethical practices are a part of this art.



## APPENDIX A

### SURVEY CONCERNING ETHICS IN CONTRACT NEGOTIATIONS

1. Are you Government\_\_\_\_\_ or Industry\_\_\_\_\_?

2. Are you former Government now in Industry?  
Yes\_\_\_\_\_ No\_\_\_\_\_

3. Are you former Industry now in Government?  
Yes\_\_\_\_\_ No\_\_\_\_\_

4. How many negotiators on staff? \_\_\_\_\_

5. Do you have an ethics code in your organization?  
Yes\_\_\_\_\_ No\_\_\_\_\_

(To clarify: Standards of Conduct is not an ethics code.)

6. Your definition of ethical behavior in contract negotiations is \_\_\_\_\_. (Choose One)

- a. the practice of doing what is right.
- b. the practice of doing strictly what the law dictates.
- c. the practice of meeting a goal without offending the other team.
- d. other\_\_\_\_\_

7. Your drive to practice ethical behavior in contract negotiations is based on \_\_\_\_\_. (Choose One)

a. Government Regulations	d. Religious Scriptures
b. Company Policy	e. Job Security
c. Personal Standards	f. Other_____

8. Does the current ethics culture of contract negotiations in Government and in industry indicate that \_\_\_\_\_. (Choose One)

- a. Industry is more ethical
- c. About the same
- b. Government is more ethical
- d. Cannot be compared.

9. How would you compare today's ethical practices (1990's) for Government and Industry with former practices (1980's)? \_\_\_\_\_. (Choose One)

a. Better than the 1980's	c. Worse than the 1980's
b. About the same as before.	

10. What is the primary feature in the organizational culture of Government and business that drives a motivation towards ethical behavior?. (Indicate by placing a "G" for Government or "I" for Industry as would best apply to each statement.)

A. a stringent set of rules. \_\_\_\_\_  
B. a profit making machine. \_\_\_\_\_  
C. organization free to make its own judgments. \_\_\_\_\_  
D. negotiator free to make his/her own judgments. \_\_\_\_\_

11. The most essential elements of ethical behavior in contract negotiations are \_\_\_\_\_. (Rank them 1,2,3,4,5 etc)

a. Truth, Honesty \_\_\_\_\_  
b. Communication \_\_\_\_\_  
c. Equity, Fairness \_\_\_\_\_  
d. Driven by past catastrophes \_\_\_\_\_  
e. other \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

12. To what extent is organizational oversight effective in producing ethical behavior in contract negotiations? (Choose One)

a. Government oversight works.  
b. Government oversight doesn't work.  
c. Industry oversight works.  
d. Industry oversight doesn't work.  
e. neither works  
f. it takes both  
g. Government oversight affects Government negotiators, not industry negotiators.  
h. Government oversight affects Industry negotiators, not Government negotiators.

13. Is the Government's policy implementation (DOD's Joint Ethics Regulations DOD 5500.7-R ) of ethical standards in contract negotiations \_\_\_\_\_. (Choose One)

a. clear  
b. unclear  
c. effective with both  
d. effective only with the Government negotiators side.  
e. effective with Industry negotiators.  
f. what the heck is this regulation?

14. Comments/New Ideas: (Optional)

From your perspective, what would be the best course of action that the Government should take to improve on ethical practices in contract negotiations?



**APPENDIX B**  
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Southwest Region  
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MCAS El Toro Building 317  
Santa Ana, CA 92709-5002

Defense Commissary Agency  
Northeast Region  
Attn: Contracting Division  
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